

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

10-CR-6063L

v.

JOSEPH CLARK,

Defendant.

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Defendant Joseph Clark (“Clark”) waived indictment and pleaded guilty to a violation of 18 U.S.C. § 2422(b) (use of an interstate facility to entice a minor to engage in sexual activity). Such a crime carried a mandatory minimum sentence of ten years. Pursuant to the United States Sentencing Guidelines (“Guidelines”), Clark faced a sentence of 210-262 months. Clark had been serving a state sentence and on January 14, 2011, this Court sentenced Clark to 180 months consecutive to the state court sentence.

The plea agreement, in addition to other provisions, provided that the defendant waived any right to appeal or collaterally attack the sentence as long as it was below the Guideline range set forth in the plea agreement.

Clark has now filed, *pro se*, a motion styled: “Motion Pursuant to 60(D)(3) FED. R. CIV. P.” (Dkt. #29).

The motion is denied. The provisions of Rule 60 are contained in the Federal Rules of *Civil* Procedure. They have no bearing whatsoever in this criminal action. The section relied on by Clark seeks to set aside a judgment for fraud committed on the Court. The provisions of Rule 60, FED. R. CIV. P., do not apply in criminal cases such as this.

CONCLUSION

The motion (Dkt. #29) filed by defendant Joseph Clark is denied.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
June 12, 2013.